

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of AURIJANAE ARMSTRONG,
Minor.¹

DEPARTMENT OF HUMAN SERVICES, f/k/a
FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

ARIS ARMSTRONG,

Respondent-Appellant,

and

ADRIENNE THORNTON,

Respondent.

In the Matter of AURIJANAE ARMSTRONG,
Minor.

DEPARTMENT OF HUMAN SERVICES, f/k/a
FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

ADRIENNE THORNTON,

Respondent-Appellant,

UNPUBLISHED
August 15, 2006

No. 266856
Wayne Circuit Court
Family Division
LC No. 05-440020-NA

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¹ The child's given name was misspelled on the order terminating parental rights. It is correctly spelled as "Aurjanae."

and

ARIS ARMSTRONG,

Respondent.

Before: Whitbeck, C.J., and Hoekstra and Wilder, JJ.

PER CURIAM.

In these consolidated appeals, respondents appeal as of right from the trial court's order terminating their parental rights to the minor child under MCL 712A.19b(3)(b)(ii), (g), and (j). We affirm.

The record in this case demonstrates that on March 16, 2005, at the age of three months, the minor child was taken to Children's Hospital of Michigan for difficulty breathing. X-rays taken at that time revealed a fracture of the lower left leg and eight or more healing rib fractures—all of which were medically determined to be the result of nonaccidental trauma. X-rays subsequently taken at Botsford General Hospital on March 17, 2005, as read by a Botsford emergency physician, did not reveal any rib fractures. In January 2005, the child had been taken to Sinai-Grace Hospital, also with respiratory distress. At that time, X-rays as interpreted by hospital physicians did not reveal any fractures. However, fractures were apparent in the Botsford and Sinai-Grace X-rays when later examined by a pediatric radiologist. The record further indicates that when respondent mother took the minor child to Sinai-Grace on January 20, 2005, the baby was crying and in obvious pain.

The trial court determined that the injuries resulted from child abuse, but found insufficient evidence to identify the perpetrator. The child's maternal grandmother testified that the child and respondent-mother lived mostly with her for the first three months of the child's life. However, there was also evidence the baby occasionally stayed overnight at respondent-father's residence, sometimes alone, and that numerous other persons resided at both locations.

Respondents' parental rights were terminated at the initial disposition without efforts towards reunification. Given the clear evidence of child abuse, we find no clear error in this procedure or in the termination of respondents' parental rights under MCL 712A.19b(3)(b)(ii). MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). As argued by petitioner, MCL 722.638(1)(a)(iii) requires that it seek termination at the initial disposition in cases of child abuse or failure to protect by a parent, where the child's abuse includes "[b]attering, torture, or other severe physical abuse." See also MCL 712A.19a(2)(a) and MCR 3.977(E). The evidence demonstrates that the injuries at issue here were caused by significant nonaccidental trauma. The evidence further demonstrates that respondents had the opportunity to prevent at least some of the child's injuries. Medical testimony disclosed that the rib and leg fractures would have been quite painful—a conclusion supported by evidence that the child exhibited significant discomfort in January and March 2005. There was also evidence also to indicate that the maternal grandmother noticed a problem with the child's leg on March 15,

2005, but that respondent-mother did not. The child protective services worker assigned to the case also testified that the leg was swollen and tender and the baby would cry hysterically when the leg was moved. It is true that respondent mother took the baby to the doctor or hospital repeatedly, and that medical professionals initially failed to discover the exact nature of the injuries. However, once the fractures of various ages were found, it became apparent that the child had suffered severe abuse on more than one occasion. Respondents had the opportunity to prevent this abuse and failed to do so, and there was a reasonable likelihood that the child would suffer injury or abuse if placed in either respondent's care. Termination of respondents' parental rights under MCL 712A.19b(3)(b)(ii) was supported by clear and convincing evidence. *Miller, supra*.

We similarly find no clear error in the trial court's determination that clear and convincing evidence supported termination of the respondents' parental rights under MCL 712A.19b(3)(g) and (j). The evidence, as discussed above, clearly supports the trial court's finding that respondents failed to provide proper care and custody for the minor child, that there was no reasonable expectation that they could do so within a reasonable time, and that there was a reasonable likelihood that the child would be harmed if returned to either respondent's home.

We also find no clear error in the trial court's determination that termination was not clearly against the child's best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 354; 612 NW2d 407 (2000). The evidence did show that respondents were bonded and appropriate with the child. However, they failed to prevent the serious, repeated, nonaccidental injuries the child suffered while in their care and custody. The child needs a loving, stable, permanent, and safe home, which the evidence demonstrates neither respondent can provide. Consequently, the trial court did not clearly err in its best interests ruling.

Affirmed.

/s/ William C. Whitbeck
/s/ Joel P. Hoekstra
/s/ Kurtis T. Wilder